

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
AIRCELL, INC.)	WT Docket No. 02-86
)	DA 03-721
Petition Pursuant to Section 7 of the Act, for a)	
Waiver of the Airborne Cellular Rule, on in the)	
Alternative, for a Declaratory Ruling)	

To: Wireless Telecommunications Bureau

COMMENTS ON PETITION FOR EXTENSION OF WAIVER

Rural Cellular Corporation and its affiliates (collectively "RCC")¹, by its attorneys, respectfully submits these comments in support of the petition submitted to the Wireless Telecommunications Bureau ("WTB" or "Bureau") of the Federal Communications Commission ("FCC" or "Commission") by AirCell, Inc. ("AirCell") and its cellular licensee partners on March 28, 2002 seeking to extend AirCell's waiver of Section 22.925 of the Commission's rules, 47 C.F.R. 22.925. These Comments are filed in accordance with the WTB's Public Notice released March 11, 2003, DA 03-721, which invited comments on AirCell's request.

I. Introduction

AirCell requests that the Commission extend the waiver period and expand the scope of the waiver to enable continuation of AirCell's service in the public interest. In light of existing special circumstances and the beneficial new services planned to enhance the service, Aircell requests that:

¹ The following companies which are wholly-owned subsidiaries of Rural Cellular Corporation and are authorized by the FCC to provide broadband Commercial Mobile Radio Service: RCC Atlantic, Inc.; RCC Holdings, Inc.; RCC Minnesota, Inc.; Wireless Alliance, LLC and TLA Spectrum, L.L.C.

1) the waiver period be extended indefinitely, but at least ten years, 2) the number of cellular channel pairs per ground station on which AirCell and partners may operate be increased from six to nineteen to allow expanded service applications, and 3) channels used by carriers for digital cellular operations be authorized for use by AirCell. RCC supports AirCell's request in its entirety.

II. The Waiver Period Should Be Extended Indefinitely

AirCell's airborne cellular services, operated pursuant to waiver of Section 22.925 of FCC Rules, have not been shown to have caused harmful interference to terrestrial cellular calls. The public has benefited from availability of the service and public safety has been enhanced. Extending the waiver term will permit AirCell to continue to offer the service and engage in business planning efforts with the assurance of FCC authority for its operation. Rural cellular operators will continue to have the opportunity to benefit from working with AirCell in a manner that generates revenue while making efficient use of spectrum and base station capacity.

Use of AirCell's system by general aviation aircraft, and potentially by commercial aviation, provides low-cost air-ground wireless communications that is valuable to public interest and safety. The service should be permitted to develop under authority of a long term waiver. Access to real-time data on weather, navigation, moving maps, telemetry and 911 service greatly enhance the safety of air traffic, and the security benefits cannot be overstated. The proposed deployment of cockpit and cabin video surveillance and crew-to-ground communications stand to make flying a far safer mode of travel.

III. AirCell Should Be Permitted to Use Nineteen Channel Pairs

RCC likewise supports AirCell's request to operate on additional channel pairs. While AirCell's initial waiver allowed it to use only six pairs, RCC supports the proposal for AirCell to use

up to nineteen channel pairs at each base station in an effort to accommodate growth in demand for the services among existing users, and to promote development of services for new types of users.

AirCell should be permitted to pursue opportunities to serve airborne government agency officials, business travelers and consumers. It should be able to negotiate with potential cellular licensee partners, investors, vendors and customers with confidence in its ability to expand services. Making additional channel pairs available for use will benefit that effort. AirCell will be able to assure new users of the availability of AirCell's capacity for delivering promised services, and all parties will be able to make the necessary investments with confidence of quality performance.

IV. AirCell Should Be Permitted to use Digital Terrestrial Cellular Frequencies

Use of digital channels by AirCell should be permitted to aid the development of the company's services. Having thoroughly tested for the potential for co-channel interference on operational TDMA and CDMA digital cell sites and having presented the results to the Bureau, AirCell has established a record for the basis of expanding the waiver to permit AirCell's use of digital. The statistical probabilities appear to demonstrate that such use will have no discernable effect on terrestrial calls. AirCell operations should not pose a material risk of interference to CDMA or TDMA operations, particularly in rural areas. In fact, there appears to be an even lower likelihood of risk of AirCell's causing harmful co-channel interference to terrestrial digital calls than to terrestrial analog calls.

AirCell will be severely constrained to continue to provide services if it is limited to analog frequencies. Terrestrial cellular systems and subscribers are converting to digital facilities, and the analog service compatibility requirement will sunset in five years. *See*, Section 22.901 of FCC Rules, 47 C.F.R. §22.901. While there was reason to impose a digital exclusion upon AirCell in its

nascent stage, maturity of the cellular industry now justifies lifting the ban. RCC believes that AirCell has demonstrated special circumstances sufficient to justify being permitted to operate on digital cellular channels, as requested.

Conclusion

RCC supports AirCell's request for FCC authorization for an extended waiver term, use of additional channel pairs and use of digital frequencies. Grant of AirCell's request will promote delivery of reliable airborne cellular service in a cost effective manner that does not interfere with terrestrial cellular operations. Air-safety and the public interest will benefit from extension of AirCell's waiver of the airborne cellular rule and expansion of AirCell's permitted use of spectrum..

Respectfully submitted,

RURAL CELLULAR CORPORATION

/s/ David L. Nace

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April 10, 2003

CERTIFICATE OF SERVICE

I, Loren Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 10th day of April, 2003, sent by U.S. Mail, a copy of the foregoing COMMENTS ON PETITION FOR EXTENSION OF WAIVER to the following:

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